



CALLING OUT THE CULTURE: ***Next Steps***

2017 I.S.B.A. Diversity & Inclusion Committee



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... Reaching Out

Under the Iowa Code of Judicial Conduct

Rule 51:3.1: [A Judge's Extrajudicial Activities]

A judge may engage in extrajudicial activities [allowed by law and in compliance with] the Iowa Code of Judicial Conduct....

Rule 51:3.7: Participation in Educational ... Activities

...[A] judge may participate in activities sponsored by organizations ... concerned with the law, the legal system, the provision of legal services, or the administration of justice, and those sponsored by or on behalf of educational... organizations not conducted for profit

Rule 51:3.10: [Prohibition on the] Practice of Law

A judge shall not practice law. ...

TODAY'S MENU

Not: Legal Advice. Nor: Psychologist.

Rather . . .

Professional-development initiative to
improve how we **deal with people**
and

Call to action, next steps to build legal
and judicial culture of **inclusion and**
diversity

...Every Lawyer's Responsibility

Under Lawyers'

Iowa Rules of Professional Conduct

Rule 32:8.4: Misconduct

It is **professional misconduct** for a lawyer to: . . .

- (d) engage in **conduct that is prejudicial to the administration of justice**; . . .
- (g) engage in **sexual harassment or other unlawful discrimination in the practice of law** or knowingly permit staff or agents subject to the lawyer's direction and control to do so.

Comment [3] A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. . . .

. . . Judges, Too

Under the Iowa Code of Judicial Conduct

Rule 51:2.3 Bias, Prejudice, and Harassment

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice or engaging in harassment . . .



****News Flash****

Model Code Amendment in 2016

[Lawyers'] Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

...

- (g) Engage in **conduct that the lawyer knows or reasonably should know is harassment or discrimination** on the basis of race, sex, religion, national origin, **ethnicity**, disability, age, sexual orientation, **gender identity**, marital status or socioeconomic status **in conduct related to the practice of law.** ...



The *Inspiration*

New in Training

- Mindfulness** (all-in listening, watching, paying attention)
- Recognizing Biases** (background, experience, notions)
- [Emerging] Cultural Defaults** (individual/
organizational reliance on bias-driven processes)

Attribution: Kathleen Nalty's

*Going All In on Diversity and Inclusion:
The Law Firm Leader's Playbook*

The Charge: Confronting Unconscious Bias

The Premise

- Unconscious** function drives ≥ 80 percent of thought
- Conscious** mind is oblivious to the unconscious
- You are two, in tandem:

Conscious self: "I have no bias."

Unconscious self: harbors stereotypes and attitudes
that leak into decision-making

Complication:

An Evolved “Culture”

Culture *noun* (Way of Life)

[social studies usage]

—the way of life of a particular people, esp. as shown in their ordinary behavior and habits, their attitudes toward each other, and their moral and religious beliefs—

Cambridge Dictionary



Reality Bites

Quiz: Aspects of a Culture

TRUE/FALSE

- T** A culture springs from every grouping of people
- F** The quality and quantity of art and books at a courthouse dictate its culture
- T** The culture of a law firm profoundly impacts what happens there
- F** Culture is a group thing so an individual has no real impact on it
- T** Culture is a dynamic force at play within the legal profession and the judiciary



Barriers Make it *Personal*

Some individuals, some groups

experience **uneven/less/no access** to:

- Networking—informal and formal
- Insider information
- Face time with decision-makers
- Mentors and sponsors
- Meaningful assignments
- Candid and frequent feedback
- Social integration
- Training and development
- Contact with people who advance careers
- Promotions/recognition/honors



Types of Bias

- 1. Availability:** a human automatically employs top-of-mind or available memory
- 2. Attribution:** a human gives inner-group people second chances, but outer-group less benefit of the doubt, employing stereotypes
- 3. Anchoring:** a human's initial valuation influences final evaluation--without awareness of the interplay
- 4. Confirmation:** a human zeroes in on what confirms existing beliefs, ignoring contrary information
- 5. Affinity:** a human gravitates toward like people, under-investing in people who are different

Reality Bites

Quiz: Hypothetically...Biases at Play?

- Ivy League lawyers perform at a higher level ✓
- Senior partners get choosy at lunchtime ✓
- You watch the camo-guy carefully for signs of PTSD ✓
- Athletes prioritize sports, with work duties second ✓
- An LSAT score defines a lawyer's competencies ✓
- Law clerks for federal judges earn my respect ✓
- Business Law has more gravitas than Family Law ✓

Bias Drives Down Culture

[Hypothetically speaking...]

Conference rooms/Courtrooms less-welcoming

Communications crippled

Mentoring needs fail to get recognized

Achievements/potential blocked

Diversity and inclusion dampened

Professional development frustrated

Career-building stymied



De-Biasing Strategies

[Inspired by American Bar Association training]

- 1. Become Aware:** identify stereotypes, assumptions
- 2. Individuate:** gather particulars of a person
- 3. Replace Stereotypes:** displace active stereotypes
- 4. Imagine Counter-Stereotypes:** think of high-profile examples to dispel stereotypes
- 5. Take Perspective:** step into the shoes of another, proactively or reactively
- 6. Increase Contact:** build a baseline of rapport with different types of people



Calibrate the Profession

Develop “Inclusive Intelligence”

--Dr. Arin Reeves

The Next IQ: The Next Level of Intelligence for 21st Century Leaders

Identify “Blind Spots” in perspective and decision-making: re-examine the salient identity among leaders

Employ “3-D Diversity” value/incorporate innate, acquired, and developed diversities

Train to “Flex”--shift automatically to optimize array of preferences, values, views, norms

--Jane Hyun and Audrey Lee

Flex: The New Playbook for Managing Across Differences

NEXT STEPS

In Summary ... **LAWYERS:**

- Acknowledge, own **humanity**
- Face up to **interplay of bias**, even by the victimized
- Acknowledge the **impact of culture** in institutions
- Cross train:**
 - identify hidden barriers
 - practice personal discipline
 - instill organizational ethos
 - commit to lead; be agent of change
- Seize each **teaching moment**



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Today's "NEXT STEPS"

Audience Interaction:

- Reflect on **Culture** and **Capacity for Change**
- Face up to **Interplay of Bias** in various contexts
- Acknowledge the **Impact of Defaults** in institutions, groups
- Explore **Next Steps** to: identify hidden barriers
 - practice personal discipline
 - instill organizational ethos
 - lead; be agent of change
- Seize each **teaching moment**

REFLECT:

An Evolved “Culture”

Culture *noun* (Way of Life)

[social studies usage]

—the way of life of a particular people, esp. as shown in their ordinary behavior and habits, their attitudes toward each other, and their moral and religious beliefs—

Cambridge Dictionary

Reflect on Culture

Group Function to spot the Sociology of a group . . .

Discuss:

- 1) Where Culture has changed**
- 2) Cause of the Change**

Interplay of Bias

Group Function to face up to presence and play of Bias

Discuss:

- 1) How Bias played out**
(Strategic? Habit? Accidental?)
- 2) Source of Bias**

Impact of Bias

Group Function to acknowledge the impact Bias has on real people, real issues. . .

Discuss:

- 1) Victim/Victor in play of Bias?**
- 2) Outcome?**

Teaching Moments

Group Function to engage as a leader promoting Diversity and Inclusion . . .

Discuss:

- 1) Organization that needs a leader**
- 2) Historic salient identity vs.
what the group needs**
- 3) Communicate a new ethos**



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